

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AT&T Communications of Illinois, Inc.,)	
TCG Illinois and TCG Chicago)	
)	Case No. 03-0239
)	
Petition for Arbitration of Interconnection)	
Rates, Terms and Conditions and Related)	
Arrangements With Illinois Bell Telephone)	
Company d/b/a SBC Illinois Pursuant to)	
Section 252(b) of the Telecommunications)	
Act of 1996)	

DIRECT TESTIMONY
OF
PATRICIA H. PELLERIN

ON BEHALF OF
SBC ILLINOIS
EXHIBIT 10.0

Dated: May 20, 2003

OFFICIAL FILE
03-0239
SBC Ill.
10.0
P. Pellerin
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ISSUES
Intercarrier Compensation 1, 2, 4, 7, 9, 10, 11, 12
GT&C 6
UNE 27, 28, 29, 30, 31, 33
Comprehensive Billing 4b
Interconnection 2
Pricing 4

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Patricia H. Pellerin. I am Associate Director - Wholesale Marketing for The
3 Southern New England Telephone Company ("SBC SNET"), a subsidiary of SBC
4 Telecommunications. My business address is 1441 North Colony Road, Meriden, CT
5 06450.

6 **Q. PLEASE DESCRIBE YOUR EDUCATION AND EMPLOYMENT EXPERIENCE.**

7 A. I attended Middlebury College in Middlebury, Vermont and received a Bachelor of
8 Science Degree in Business Administration, magna cum laude, from the University of
9 New Haven in West Haven, Connecticut. I have held several assignments in Network
10 Engineering, Network Planning, and Network Marketing and Sales since joining SBC
11 SNET in 1973. Most recently, from 1994 to 1999 I was a leading member of the
12 wholesale marketing team responsible for SBC SNET's efforts supporting the opening of
13 the local market to competition in Connecticut. I assumed my current position in April
14 2000.

15 **Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?**

16 A. As Associate Director - Wholesale Marketing, I am responsible for providing regulatory
17 support to the Industry Markets department of SBC Telecommunications relative to
18 various wholesale products and pricing.

19 **Q. HAVE YOU TESTIFIED BEFORE OTHER STATE COMMISSIONS?**

20 A. Yes. I have previously testified before the Connecticut Department of Public Utility
21 Control ("DPUC") in Docket No. 00-01-02, *Application Of The Southern New England*
22 *Telephone Company For Approval Of Cost Studies For Unbundled Network Elements,*

Docket No. 00-03-19, *DPUC Review of The Southern New England Telephone Company's Studies of Unbundled Network Elements Non-Recurring Costs*, Docket No. 98-09-01RE01, *DPUC Investigation of the Southern New England Telephone Company's UNE Nonrecurring Charges - Compliance*, Docket No. 00-05-06, *Application Of The Southern New England Telephone Company For A Tariff To Introduce Unbundled Network Elements*, Docket No. 00-07-17, *DPUC Investigation of the Southern New England Telephone Company's Alternative Regulation Plan*, Docket No. 00-04-35, *Application of MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, Inc., and Brooks Fiber Communications of Connecticut, Inc. for Mediation*, Docket No. 01-02-09, *DPUC Investigation of Telephone Company Termination Liability Fees and Other Practices*, Docket No. 01-01-30, *Petition of Global NAPs, Inc. for Arbitration Pursuant to U.S.C. Section 252(b) of Interconnection Rates, Terms and Conditions with The Southern New England Telephone Company*, Docket No. 01-08-19, *Petition of PaeTec Communications, Inc. for Resolution of a Disagreement with The Southern New England Telephone Company*, and Docket No. 02-01-23, *Petition of Cox Connecticut Telecom, LLC for Investigation of The Southern New England Telephone Company's Transit Service Cost Study and Rates*.

In addition, I have provided testimony to the Michigan Public Service Commission in SBC Michigan's 2003 Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with MCImetro Access Transmission Services, LLC, Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to address issues in this arbitration related to Inter-carrier Compensation (Issues 1, 2, 4, 7, 9, 10, 11, 12), General Terms and Conditions (Issue 6), UNE (Issues 27, 28, 29, 30, 31, 33), Comprehensive Billing (Issue 4b), Interconnection (Issue 2), and Pricing (Issue 4) and to respond to AT&T's testimony on these issues proffered by its witnesses: Messrs. Finney-Schell-Talbott, Ms. Moore, Mr. Rhinehart, and Mr. Noorani.

INTERCARRIER COMPENSATION ISSUES (1, 2a-e, 4, 7, 9, 10a-b, 11, 12)

ISSUE 1: Should The Terms Of This Article Apply To Traffic Where AT&T Is Using ULS-ST Provided By SBC Illinois?

(Inter-carrier Compensation Section 21.1.1)

Q. PLEASE DESCRIBE THIS ISSUE.

A. This issue turns on a single sentence proposed by AT&T and opposed by SBC Illinois for Section 21.1.1. To understand the issue, the Commission should look first to that language:

This Article does not apply to traffic exchanged where AT&T is using unbundled local switching with shared transport (ULS-ST) provided by SBC-Illinois.

AT&T acknowledges that calls exchanged between AT&T and SBC Illinois are subject to reciprocal compensation under this interconnection agreement. Yet AT&T seeks to exclude relevant terms and conditions for reciprocal compensation as it pertains to ULS-ST. Instead, AT&T argues that SBC Illinois' tariff for ULS-ST should be the vehicle to set forth the terms, conditions, and rates for ULS-ST inter-carrier compensation. Moreover, AT&T seeks to apply an outdated tariff rate that was superseded more than eight months ago, arguing that the Commission improperly adopted SBC Illinois' tariff

revisions filed in August 2002. SBC Illinois disagrees with AT&T's position that Article 21 does not apply to ULS-ST, and SBC Illinois also disagrees with applying an outdated tariff rate to ULS-ST.

Q. HOW DOES THE TARIFF ADDRESS RECIPROCAL COMPENSATION FOR ULS-ST?

A. Under the Description of ULS-ST, the tariff states:

The telecommunications carrier that purchases ULS-ST will be solely responsible for establishing compensation arrangements with all telecommunications carriers to which traffic is delivered, or from which traffic is received, using ULS-ST, including all traffic carried by Shared Transport Transit.¹

And in the Rate Applications section of the tariff for ULS-ST Blended Transport Usage Rate, the tariff states:

[W]hen the Company terminates a call to a Company subscriber that was originated using ULS-ST, the Company is entitled to charge a rate equal to the Commission approved reciprocal compensation rate for the termination.²

These two provisions articulate that when utilizing ULS-ST: 1) AT&T must establish compensation arrangements with the terminating carrier; and 2) when the terminating carrier is SBC Illinois, reciprocal compensation applies.

¹ ICC Tariff No. 20, Part 19, Section 21 at Sheet 2.

² *Id.* at Sheet 36.

89 **Q. HOW ARE THESE TARIFF PROVISIONS RELEVANT TO THIS**
90 **INTERCONNECTION AGREEMENT?**

91 A. SBC Illinois believes that the parties' interconnection agreement, rather than the tariff,
92 should govern the rates, terms and conditions under which AT&T obtains ULS-ST from
93 SBC Illinois. Indeed, the agreement already does govern ULS-ST, in Schedule 9.2.7.

94 In the event that the Commission concludes, however, that the tariff should
95 govern SBC Illinois' provision of ULS-ST to AT&T, then the current, Commission-
96 approved tariff rate must govern as well. Outside of an interconnection agreement, the
97 tariffed rates for reciprocal compensation provide the mechanism by which SBC Illinois
98 recovers its costs incurred in terminating traffic from a CLEC's ULS-ST; yet AT&T
99 seeks to bypass these effective tariff terms and conditions. AT&T's witness, Daniel
100 Rhinehart, goes so far as to suggest that this Commission should ignore the effective
101 tariff and revert to the tariff language and rates in effect prior to the current tariff.

102 **Q. MR. RHINEHART IMPLIES IN Q13 THAT THE CURRENT TARIFF IS**
103 **ILLEGAL. HOW DO YOU RESPOND?**

104 A. Mr. Rhinehart apparently believes that since AT&T disagrees with the current tariff, it
105 does not represent "the appropriate legal rate last established and approved by this
106 Commission for ULS-ST reciprocal compensation." Mr. Rhinehart is plainly wrong.
107 The tariff has been in effect for a number of months and is legally binding unless and
108 until it is changed.

109 As for the tariff provisions that AT&T seeks to ignore, in the Commission's
110 decision in Docket No. 00-0700 at paragraph 90 it stated, "Based upon the record before
111 us, we reject Ameritech's inclusion of reciprocal compensation terms and conditions in

its ULS-ST tariff.” With this statement, the Commission directed SBC Illinois to remove its reciprocal compensation terms and conditions, including the rate, for ULS-ST. That is exactly what SBC Illinois did in its compliance tariff filing. Absent a discrete reciprocal compensation rate associated with ULS-ST, intercarrier compensation for ULS-ST must be based on the effective reciprocal compensation rates in the tariff. To do otherwise would be inconsistent with the reciprocal compensation obligations of Section 251(b)(5) of the 1996 Act.

Q. DID AT&T HAVE AN OPPORTUNITY TO CHALLENGE SBC ILLINOIS’ COMPLIANCE TARIFF?

A. AT&T had every opportunity to persuade the Commission that SBC Illinois had misinterpreted the Commission’s ruling, and, in fact, attempted to do so.³ Yet the Commission did not find that AT&T was correct in its interpretation and did not order SBC Illinois to file a revised tariff. Accordingly, SBC Illinois’ tariff has been and continues to be effective. Eight months have passed since AT&T challenged SBC Illinois’ tariff. AT&T should not be afforded another bite at the apple in this arbitration simply because its previous efforts failed.

Q. WHEN SBC ILLINOIS INVOKES THE FCC’S ISP COMPENSATION PLAN, HOW WILL THAT AFFECT INTERCARRIER COMPENSATION FOR ULS-ST?

A. Local non-ISP traffic originating from and terminating to ULS-ST will be compensated in the same manner and at the same rate as other 251(b)(5) traffic exchanged under the terms of this agreement. This is true regardless of whether or not SBC Illinois invokes

³ See Sched. PHP-2.

the FCC's ISP Compensation Plan. Local ISP traffic will be compensated at the FCC's capped rate.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. The Commission should reject AT&T's proposed language in Section 21.1.1 that would exclude ULS-ST from the provisions of Article 21. In addition, AT&T's belated attempt to rewrite SBC Illinois' tariff should be dismissed.

ISSUE 2: Intercarrier Compensation Sections 21.2.1, 21.2.7, 21.2.8 and 21.7 and its subsections

ISSUE 2A: Can the Terminating Party Charge Exchange Access To The Originating Party For Traffic Within The Originating Party's Local Calling Area?

ISSUE 2B: How Should ISP-bound, FX-like Traffic Be Compensated Pursuant To The Rules Established By The FCC In The ISP Remand Order?

(Intercarrier Compensation Section 21.2.7)

ISSUE 2C: Should Local Calls Be Defined As Calls That Must Originate And Terminate To End Users Physically Located Within The Same Common Or Mandatory Local Calling Area?

(Intercarrier Compensation Sections 21.2.1, 21.2.7 and 21.2.8)

Q. PLEASE EXPLAIN ISSUE 2A.

A. Although the parties agreed on the statement of the issue ("Can the Terminating Party Charge Exchange Access To The Originating Party For Traffic Within The Originating Party's Local Calling Area?"), I do not believe that statement gets at the core of the disagreement. As always, the real issue is to be found in the competing contract language. Here, AT&T has proposed language in Section 21.2.7 stating:

Reciprocal compensation between the Parties shall be based on the originating carrier's local calling area as approved by the Commission.

In other words, AT&T would base the parties' reciprocal compensation duties on the *originating carrier's* local calling areas. SBC Illinois opposes this language, because the law (including this Commission's prior decisions) is clear that the Parties' reciprocal compensation duties are based on *SBC Illinois'* local calling areas. SBC Illinois' proposed Section 21.2.7 reflects this by stating:

"Local Calls", for purposes of intercarrier compensation, is traffic . . . within the same or different *SBC-Illinois* Exchange(s) that participate in the same common local or common mandatory local calling area approved by the Illinois Commerce Commission.

(SBC Illinois' proposed language for Section 21.2.7 goes on to underscore that this definition applies only for purposes of intercarrier compensation, and that AT&T is "free to define its own 'local' calling area(s) for purposes of" its dealings with its customers.)

Q. WHY SHOULD THE COMMISSION APPROVE SBC ILLINOIS' LANGUAGE AND REJECT AT&T's?

A. AT&T is, as SBC Illinois' language states, free to define its local exchange areas however it likes for purposes of its dealings with its customers. But we have to have one carrier's local exchange areas determine which calls are "local" for purposes of intercarrier compensation. We can't have AT&T's local exchange areas control that determination for calls that originate on AT&T's network and SBC Illinois' local exchange areas control for calls that originate on SBC Illinois' network – which is what AT&T is proposing. And, as this Commission has previously concluded, the one carrier whose local exchange areas determine what calls are "local" for purposes of reciprocal compensation is SBC Illinois.

Q. WHY WON'T AT&T's PROPOSAL WORK?

A. Under AT&T's proposal, if you are an SBC Illinois customer living in Elgin and your brother is an AT&T customer living in Chicago, a call from your brother to you could be subject to reciprocal compensation (because it originates in an AT&T local exchange, and AT&T may have chosen to have a single, large exchange cover Chicago and Elgin), while a call from you to your brother would not be subject to reciprocal compensation (because it originates in an SBC Illinois exchange, and Elgin and Chicago are in different SBC Illinois exchanges). Obviously, it makes no sense for a call from point X to point Y to be subject to reciprocal compensation while a call from point Y to point X is not.

Q. HAS THE COMMISSION PREVIOUSLY ADDRESSED THIS ISSUE?

A. Yes. The Commission most recently addressed this very issue in the Global NAPs arbitration, ICC Docket No. 01-0786, under Issue No. 3. The question in Global Issue No. 3 was: "Should Ameritech-IL's local calling area boundaries be imposed on Global, or may Global broadly define its own local calling areas." Staff supported Ameritech's position on the issue:

Staff recommends that a uniform local calling area govern intercarrier compensation. Ameritech has a Commission-approved local calling area. Staff urges the carriers to use the existing local calling areas in Ameritech's service territory for purposes of intercarrier compensation.

Staff further recommends that for purposes of intercarrier compensation, the Commission should use the existing Commission-approved local calling area. Staff asserts that it would be chaotic to apply different local calling area standards on inter-network calls.⁴

⁴

Arbitration Decision, ICC Case No. 01-0786 (May 14, 2002), at 12

And the Commission concluded:

The Commission rejects Global's request that it be allowed to define its own local calling area. At the present time, the Commission has approved one LCA in Illinois that is currently used by Ameritech. While there may be technological changes since the Commission last visited the LCA issue, it would be inappropriate to reconsider the issue in this docket. The Commission agrees with Ameritech and Staff that to recognize any other arrangement would be inappropriate in light of these factors, but would also cause confusion in the area of intercarrier compensation.⁵

Q. ARE THERE DIFFERENCES BETWEEN GLOBAL'S ISSUE 3 AND AT&T'S ISSUE 2a THAT WOULD NEGATE THE COMMISSION'S PRIOR ANALYSIS?

A. No. Global and AT&T differ to the extent that Global was seeking to pay reciprocal compensation to SBC Illinois based on its LATA-wide local calling area, while AT&T has offered no specifics regarding its retail calling plans. But there is nothing in AT&T's proposal that would make intercarrier compensation based on a variety of retail calling plans any less chaotic than it would have been under Global's proposal.

Q. IN THEIR TESTIMONY AT Q89 AND Q94, AT&T'S WITNESSES (FINNEY-SHELL-TALBOTT) RAISE THE ISSUE OF VERIZON'S OPERATING AREA. HOW DO YOU RESPOND?

A. This interconnection agreement is between SBC Illinois and AT&T as a CLEC doing business in SBC Illinois' service territory. When AT&T is providing local service in another LEC's territory, any interconnections it would have with SBC Illinois in that capacity would not be subject to this agreement; rather, AT&T and SBC Illinois would need to negotiate a separate agreement.

In response to Q89, AT&T's witnesses identify a concern that calls between an SBC Illinois end user and an AT&T end user residing within SBC Illinois' local calling area but outside of SBC Illinois' service territory would be considered Feature Group A ("FG-A") or foreign exchange ("FX"). AT&T makes a valid point, and SBC Illinois has revised its language accordingly. The first sentence of Section 21.2.8 now reads:

Calls delivered to or from numbers that are assigned to an exchange within a common mandatory local calling area but where the receiving or calling party is physically located outside the common mandatory local calling area of the exchange to which the number is assigned are either Feature Group A (FGA) or FX traffic and are not Local Calls for intercarrier compensation and are not subject to local reciprocal compensation.

This is consistent with my statement above that traffic exchanged outside of SBC Illinois' service territory is not encompassed by this agreement, but must be negotiated in a separate agreement.

Q. WHAT IS YOUR CONCLUSION ON ISSUE 2A?

A. AT&T's language in Section 21.2.7 that bases reciprocal compensation on the originating carrier's local calling area is inconsistent with the Commission's ruling in the Global arbitration and should be rejected. SBC Illinois' proposed language is consistent with that ruling and should be accepted.

Q. WHAT ISSUE WILL YOU DISCUSS NEXT?

A. Issue 2c, and after that I will turn to 2b. The reason for this is that I think an understanding of Issue 2c will help in understanding Issue 2b.

258 **Q. WHAT IS ISSUE 2C?**

259 A. The question is one that this Commission has arbitrated several times: Given that calls
260 that are subject to reciprocal compensation are those calls that originate and terminate in
261 the same local calling area, are the points of origin and termination determined by the
262 actual location of the calling party and the called party, or by their phone numbers (*i.e.*,
263 their NPA-NXXs)? Differently stated, is a call passed from one local exchange to
264 another but that appears “local” to the network because the called party has FX service
265 subject to reciprocal compensation?

266 **Q. HOW HAS THE COMMISSION RESOLVED THIS ISSUE IN THE PAST?**

267 A. The Commission has ruled – repeatedly and recently – that such a call is *not* subject to
268 reciprocal compensation.

269 **Q. HOW DOES THE ISSUE ARISE IN THIS ARBITRATION?**

270 A. At issue is the definition of local calling area for purposes of intercarrier compensation.
271 SBC Illinois’ language in Sections 21.2.1, 21.2.7 and 21.2.8 provides, consistent with this
272 Commission’s rulings and the FCC’s rules, that FX traffic is not subject to reciprocal
273 compensation.

274 AT&T, on the other hand, states that the FCC’s *ISP Remand Order* somehow
275 overrules the Commission’s previous orders regarding compensation for FX traffic.
276 AT&T further suggests that if the Commission adheres to its existing rule that FX traffic
277 is not subject to reciprocal compensation, the Commission should redefine local calls in
278 such a way that reciprocal compensation would be determined based on the originating
279 and terminating NPA-NXXs. The result of such a ruling would be to reclassify FX traffic

as local for reciprocal compensation purposes – the very result the Commission has previously rejected.

Q. WHAT IS FX SERVICE?

A. When I use the term FX service, I am including any FX-like service that may be offered to end users, regardless of the name of the retail service. FX service offers an end user a local presence in a different exchange from the one associated with his or her physical location. In this way, callers may reach the FX customer by dialing a local telephone number, even though the call is transported and terminated at the FX customer's location in a distant exchange. FX service is not an expanded local calling area service. FX service provides a *different* local calling area, not an expanded one.

Q. PLEASE PROVIDE AN EXAMPLE OF FX SERVICE.

A. Suppose a business that is physically located in Chicago wants to attract business from potential customers in Elgin. One way of doing this would be to obtain FX service from Elgin with an Elgin telephone number. This business located in Chicago appears to prospective customers to be located in Elgin because it has been assigned an Elgin telephone number, and its customers can call it at that number without incurring a toll charge. In reality, the call is transported over the Public Switched Telephone Network ("PSTN") from Elgin all the way to Chicago – a distance of approximately 40 miles. Through its FX arrangement, this business has received a premium service, and it is this FX customer that has caused the additional transport cost.

Q. DOESN'T SBC ILLINOIS RECOVER ITS COSTS FOR THESE CALLS FROM ITS LOCAL EXCHANGE CUSTOMERS?

A. Retail exchange rates were established based on the traditional monopoly telephone network, where locally-dialed calls both originated and terminated on SBC Illinois' network. When a call was placed to an FX subscriber physically located outside of the caller's local calling area, the caller's local service rate did not compensate SBC Illinois for the additional transport of the call. Instead, SBC Illinois carried that call over facilities paid for by the cost causer, the FX subscriber.

In today's world where AT&T serves this FX subscriber, SBC Illinois may incur additional transport costs, depending on the location of AT&T's POI, and, according to AT&T's definition of local calls, would also have to compensate AT&T to terminate the call. Yet SBC Illinois is still receiving the same local service revenue from its end user, based on a rate that never contemplated recovery of these additional costs because the FX service appropriately bore the cost.

Q. IS SBC ILLINOIS ATTEMPTING TO DICTATE AT&T's LOCAL CALLING AREAS?

A. No. As I stated above in connection with Issue 2a, each local exchange carrier has the ability to define its own local calling areas for purposes of its retail calling plans, and SBC Illinois' proposed contract language so provides. SBC Illinois does not dispute AT&T's right to assign NPA-NXX codes associated with one local calling area to subscribers that physically reside in another local calling area. Thus, SBC Illinois' concern is not the assignment of such numbers or the service provided by AT&T to its customers. Rather, it is the appropriate intercarrier compensation associated with the delivery of calls to those customers. Calls that appear to be local because of the NXX

assigned, but that are terminating to customers physically located outside of the originating party's local calling area should not be classified as local calls subject to local reciprocal compensation.

Q. HAS THE COMMISSION RULED ON THIS ISSUE PREVIOUSLY?

A. Several times. The issue was addressed in the Commission's decision in the Level 3 arbitration, ICC Docket No. 00-0332, under Issue No. 2b. There, the issue was: "Whether an FX or NXX call that would not be local based on the distance it travels, is subject to reciprocal compensation." The Commission ruled:

The reciprocal compensation portion of the issue is straightforward. The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701(a)-(b)(1). FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as "virtual NXX," which Level 3 uses, or as "FX," which AI prefers, this service works a fiction. It allows a caller to believe that he is making a local call and to be billed accordingly when, in reality, such call is traveling to a distant point that, absent this device, would make the call a toll call. The virtual NXX or FX call is local only from the caller's perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for purposes of imposing reciprocal compensation. Moreover, we are not alone in this view. The Public Utility Commission of Texas recently determined that, to the extent that FX-type calls do not terminate within a mandatory local calling area, they are not eligible for reciprocal compensation. *See*, Docket No. 21982, July 13, 2000. On the basis of the record, the agreement should make clear that if an NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.⁶

⁶ Arbitration Decision, Case No. 00-0332 (Aug. 30, 2000), at 9-10.

357 **Q. AT&T ARGUES THAT THE FCC'S APRIL 27, 2001, *ISP REMAND ORDER***
358 **SHOULD YIELD A DIFFERENT RESULT. HAS THIS COMMISSION**
359 **REVISITED THE DECISION IT MADE IN THE LEVEL 3 ARBITRATION**
360 **SINCE THE *ISP REMAND ORDER* WAS ISSUED?**

361 A. Yes, twice. The issue was raised in the TDS arbitration, ICC Docket No. 01-0338. In its
362 August 8, 2001 decision ("TDS Decision") in that arbitration under Issue No. 25
363 (TDS-107), the Commission again ruled that FX traffic is not subject to reciprocal
364 compensation.⁷ And the Commission reaffirmed that same conclusion just last year, in
365 the Global NAPs arbitration.⁸

366 **Q. WHAT RECENT DECISIONS IN OTHER JURISDICTIONS SUPPORT SBC**
367 **ILLINOIS' POSITION REGARDING FX TRAFFIC?**

368 A. The decision that I am most familiar with is the Connecticut DPUC decision and related
369 clarifications in Docket No. 01-01-29.⁹ In its January 30, 2002 decision in this docket,
370 the DPUC concluded that, "FX service is an interexchange service and therefore, all
371 traffic carried over FX facilities shall not be eligible for mutual compensation."¹⁰ In its
372 April 25, 2002 letter clarifying its decision, the DPUC did not preclude carriers from
373 collecting originating access charges on FX traffic.¹¹

⁷ Arbitration Decision, Case No. 01-0338 (Aug. 8, 2001), at 48.

⁸ Global Decision at 15.

⁹ CT Docket No. 01-01-29, *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Decision January 30, 2002.

¹⁰ *Id.* at 48.

¹¹ DPUC Letter from Louise Rickard, DPUC Acting Executive Secretary, to Keith Krom, SNET General Attorney, dated April 25, 2002. Distribution was provided to the docket Service List.

The DPUC re-opened this decision for the limited purpose of assessing the effect of the FCC's *Verizon Order*, which AT&T relies on here, on its earlier decision. On November 13, 2002, the DPUC issued its decision stating that the *Verizon Order* was not relevant and reaffirmed its January 30, 2002 decision. The DPUC stated:

Regarding FX service, the Department continues to believe that it is an interexchange service that is provided from an exchange that is different from one that normally serves the area in which the subscriber is located. . . . While telephone calls made to FX service subscribers allow their customers to call without incurring toll charges, for purposes of payment of mutual compensation, such calls are non-local in nature; and therefore, they are not subject to mutual compensation.¹²

In rejecting the *Verizon Order*, the DPUC found that ruling to be somewhat inconsistent with prior FCC decisions and stated:

Specifically, the FCC Virginia Order may conflict with an FCC ruling in *AT&T Corp v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 587 (1998), and *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017 (rel. July 25, 2002). *Verizon Brief*, pp. 9-13. The Department notes that in *AT&T Corp v. Bell Atlantic-Pennsylvania*, the FCC rejected the use of assigned NPA-NXX codes in place of the call's actual geographic end points for purposes of intercarrier compensation. *Id.*, p. 10. Additionally, in *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, the FCC determined that an incumbent local exchange carrier was entitled to charge for transport facilities that it provides to deliver traffic to a distant calling area in connection with an interconnecting carrier's wide-area bound calling service. Why this ruling is germane to the instant case is the fact that that virtual FX compensation should flow in the opposite direction, (i.e., that the originating incumbent should be obligated to compensate the local exchange carrier for the delivery of this toll traffic). *Id.*, pp. 10 and 11. In the opinion of the Department, the January 30, 2002 Decision appears to be consistent with these rulings because calls that have extended

¹² CT Docket No. 01-02-29RE01, Decision November 13, 2002 at 5.

beyond a designated local exchange area (i.e., interexchange or non-local in nature), were ineligible for reciprocal compensation.¹³

Q. WHAT IS SIGNIFICANT ABOUT THE CONNECTICUT ORDER AS IT RELATES TO AT&T'S POSITION IN THIS ARBITRATION?

A. AT&T contends that the FCC's *ISP Remand Order* somehow requires that FX traffic be treated as subject to reciprocal compensation. The CT DPUC issued its order affirming that FX traffic is interexchange in nature in January 2002, a full seven months following the *ISP Remand Order*. Importantly, the DPUC issued its first draft decision in this docket on March 29, 2001. The DPUC then reopened the evidentiary record on May 4, 2001 in order to consider the effect, if any, of the *ISP Remand Order*. In its Notice of Reopening of Evidentiary Record and Request for Written Comments, the DPUC stated its intention:

In light of the above and the Written Exceptions submitted by other parties to this proceeding, the Department hereby reopens the evidentiary record to accept Written Comments addressing: 1) recent changes in law (e.g., the FCC's April 18, 2001 Order on Remand and Report and Order, CC Docket No. 96-98, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996* and CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*; the FCC's April 19, 2001 Notice of Proposed Rulemaking in CC Docket No. 01-02, *Developing a Unified Intercarrier Compensation Regime*, and state commission decisions/orders addressing the payment of mutual compensation for local calls carried over foreign exchange service facilities; 2) recent changes in technology; 3) recent changes in industry practice; 4) the status of competition in Connecticut since Docket No. 99-01-15 was initiated; 5) the March 29, 2001 draft Decision's reliance on the physical location of the originating and terminating end users to determine how to treat such calls for ratemaking purposes as

¹³

Id. at 6.

opposed to the NPA-NXX of the end users involved; and 6) the imposition/collection of access charges for FX calls.¹⁴

When the DPUC issued its final decision in January 2002, it had fully considered the *ISP Remand Order* and determined that it did *not* affect the conclusion that FX traffic is interexchange traffic not subject to reciprocal compensation. Furthermore, consistent with the characterization of FX traffic as interexchange, the CT DPUC did not preclude carriers from imposing originating access charges for FX traffic. The CT DPUC reached the proper conclusion. Importantly, while AT&T was an active participant in that docket, it did not appeal the DPUC's order.

Q. WHY HAS SBC ILLINOIS INCLUDED FX TRAFFIC AS A DISCRETE CLASSIFICATION OF TRAFFIC IN SECTION 21.2.1 AND INCLUDED ADDITIONAL LANGUAGE IN SECTION 21.2.8?

A. SBC Illinois specifically identifies FX traffic as a separate category of traffic that, with contract silence, could be misinterpreted to be compensable under reciprocal compensation. FX traffic is not local traffic, and therefore is not subject to reciprocal compensation. However, FX traffic typically looks like local traffic, and SBC Illinois seeks to maintain contractual clarity that these calls, while appearing local, are not to be treated as local for intercarrier compensation purposes. In addition, SBC Illinois includes language in Section 21.2.8 to clearly articulate the compensation applicable to FG-A¹⁵ and FX traffic, thus removing any potential ambiguity or misinterpretation of the contract.

¹⁴ CT DPUC Notice of Reopening of Evidentiary Record and Request for Written Comments in Docket No. 01-01-29, May 4, 2001 at 2.

¹⁵ FG-A is an FX service made available to interexchange carriers via SBC Illinois' access tariff. ICC Tariff No. 21, Section 6.1.1(B), Page 115.

459 **Q. DO YOU HAVE ANY ADDITIONAL RESPONSE TO THE CONTENTION OF**
460 **AT&T's WITNESSES THAT FX TRAFFIC IS SUBJECT TO RECIPROCAL**
461 **COMPENSATION BASED ON THE *ISP REMAND ORDER*?**

462 A. AT&T's witnesses discuss the application of the *ISP Remand Order* to voice FX traffic at
463 great lengths under Q110 – Q114. Their entire argument rests on the FCC's removal of
464 the word "local" as it applies to 251(b)(5) traffic. They improperly conclude that voice
465 FX traffic does not fall within the Section 251(g) carve-out, and that therefore it must be
466 subject to reciprocal compensation.

467 The FCC removed the word local in describing traffic "because the term 'local,'
468 not being a statutorily defined category, is particularly susceptible to varying meanings
469 and, significantly, is not a term used in section 251(b)(5) or section 251(g)."¹⁶ This
470 removal of the word "local" as it relates to defining 251(b)(5) traffic does not change the
471 nature of FX traffic, suddenly making it subject to reciprocal compensation. It simply
472 removed a term of varying interpretations. The dispute in this arbitration relative to the
473 definition of local calls under Issue 2a is a prime example of two carriers' distinct
474 representations of the meaning of "local." Importantly, the FCC did not disrupt the
475 access charge regime for intercarrier compensation.¹⁷

¹⁶ *ISP Remand Order* at ¶ 34.

¹⁷ At footnote 66 of the *ISP Remand Order*, the FCC stated: "Although section 251(g) does not itself compel this outcome with respect to *intrastate* access regimes (because it expressly preserves only *the Commission's* traditional policies and authority over *interstate* access services), it nevertheless highlights an ambiguity in the scope of "telecommunications" subject to section 251(b)(5) – demonstrating that the term must be construed in light of other provisions in the statute. In this regard, we again conclude that it is reasonable to interpret section 251(b)(5) to exclude traffic subject to parallel intrastate access regulations, because "it would be incongruous to conclude that Congress was concerned about the effects of potential disruption to the interstate access charge system, but had no such concerns about the effects on analogous intrastate mechanisms."

AT&T's witnesses fail to recognize the incongruity of their position in this arbitration. The Parties have already agreed that intraLATA toll traffic will be exchanged based on access rates, not reciprocal compensation.¹⁸ Since voice FX calls are completed outside the local calling area just as toll calls are, it is appropriate that such calls are excluded from local reciprocal compensation as well.

Q. DOES THAT CONCLUDE YOUR DISCUSSION OF ISSUE 2C?

A. Yes, and I now turn to Issue 2b.

Q. PLEASE DESCRIBE THE ISSUE REGARDING ISP FX COMPENSATION.

A. The Parties disagree as to the compensation treatment of ISP-bound FX traffic in light of the *ISP Remand Order*. It is SBC Illinois' position that reciprocal compensation does not apply to ISP-bound traffic that is FX, because the Commission has already determined that FX traffic is subject to bill and keep, but that it does apply to local ISP-bound traffic in accordance with the "mirroring" rule in the *ISP Remand Order* to the extent an ILEC has not invoked the ISP Compensation Plan described below. AT&T, on the other hand, posits that whether ISP-bound traffic is local or not is irrelevant because such traffic is subject to the FCC's jurisdiction.

Q. BRIEFLY SUMMARIZE THE FCC's ISP REMAND ORDER.

A. In its *ISP Remand Order*, the FCC concluded that ISP-bound traffic is governed by Section 251(g) of the Act rather than Section 251(b)(5). The FCC also established a

¹⁸ While the Parties still have a dispute as to the level of those access rates for this agreement under Issue 11, there is fundamental agreement that intraLATA toll traffic will be exchanged at access rates rather than local reciprocal compensation rates.

mechanism for intercarrier compensation of ISP-bound traffic (“ISP Compensation Plan”), providing ILECs with the option to invoke the ISP Compensation Plan on a state by state basis. Under this plan, an ILEC may choose to exchange ISP-bound traffic that originates from its end user and is delivered to an ISP in the same local calling area that is served by a CLEC at the rates set by the FCC, but only if the ILEC agrees to offer to exchange traffic subject to Section 251(b)(5) at those same rates. ILECs that have not elected to invoke the ISP Compensation Plan must compensate ISP-bound traffic at the state-approved rates for Section 251(b)(5) traffic.¹⁹ This is referred to as the “mirroring” rule. SBC Illinois has informed AT&T that it will invoke the FCC’s ISP Compensation Plan for ISP-bound traffic in Illinois.

Q. HOW IS THE MIRRORING RULE RELEVANT TO ISP-BOUND FX TRAFFIC?

A. Under the mirroring rule, the FCC requires both voice and ISP-bound traffic to be compensated in the same manner. “This is the correct policy result because we see no reason to impose different rates for ISP-bound and voice traffic.”²⁰ Accordingly, ISP-bound traffic that is FX in nature must be treated in the same manner as voice FX traffic. Since the Commission has previously determined that FX traffic is exempt from reciprocal compensation, and SBC Illinois requests the Commission to affirm this determination under Issue 2c, ISP-bound traffic that is FX in nature is also exempt from reciprocal compensation provisions.

¹⁹ *ISP Remand Order* at ¶ 89.

²⁰ *Id.* at ¶ 90.

514 **Q. DOES THE *ISP REMAND ORDER* AFFECT COMPENSATION FOR ALL ISP**
515 **TRAFFIC?**

516 A. No, it does not. The FCC made clear that certain ISP-bound traffic was exempt from the
517 ISP Compensation Plan.

518 * Because the transitional rates are *caps* on intercarrier
519 compensation, they have no effect to the extent that states have
520 ordered LECs to exchange ISP-bound traffic either at rates below
521 the caps or on a bill and keep basis (or otherwise have not required
522 payment of compensation for this traffic). The rate caps are
523 designed to provide a transition toward bill and keep, and no
524 transition is necessary for carriers already exchanging traffic at
525 rates below the caps.²¹

526 The only ISP-bound traffic that is subject to the ISP Compensation Plan,
527 therefore, is that which would have been subject to reciprocal compensation as local
528 traffic under 251(b)(5) had the Commission not taken jurisdiction. For an ILEC such as
529 SBC Illinois that is invoking the ISP Compensation Plan, the only ISP-bound traffic
530 subject to the rate caps is that which was compensated at the same rate as 251(b)(5)
531 traffic under the mirroring rule. Since this Commission has already determined that FX
532 traffic is subject to bill and keep rather than reciprocal compensation, the FCC's rate caps
533 have no effect on this traffic.

534 **Q. HOW SHOULD ISP-BOUND TRAFFIC DIALED ON A TOLL OR 800 TOLL-**
535 **FREE BASIS BE COMPENSATED BETWEEN AT&T AND SBC ILLINOIS?**

536 A. ISP-bound traffic that is dialed as a 0+ or 1+ toll call or as a 1+800 toll free call must be
537 treated as all other toll and 800 calls.²² When an end user accesses the Internet via a toll

²¹ *ISP Remand Order* at ¶ 8

²² In testimony, AT&T's witnesses (Finney-Schell-Talbott) raise a concern at Q159 regarding the 847 area code. While all calls within the 847 area code are placed as 1+10-digit calls, the local or toll nature of the calls is unaffected. Thus, 1+10-digit local calls within the 847 area code remain local calls. ISP-bound calls placed on a
(cont'd)

538 or 800 number, these calls are treated exactly the same as every other toll or 800 call.
539 The various routing and billing systems cannot make any distinction. Such calls result in
540 either the originating caller paying a toll charge or the terminating subscriber paying for
541 completion of 800 calls, and therefore, originating and terminating access charges apply,
542 respectively. This represents the industry standard practice for this traffic.

543 **Q. HOW HAS THE FCC ADDRESSED THIS ISSUE IN ITS *ISP REMAND ORDER*?**

544 A. A careful reading of paragraph 2 of the *ISP Remand Order* indicates that the FCC did not
545 intend to address ISP-bound calls that are placed as either toll or 800 calls. "We
546 recognize that the existing intercarrier compensation mechanism for the delivery of this
547 traffic, in which the originating carrier pays the carrier that serves the ISP, has created
548 opportunities for regulatory arbitrage and distorted the economic incentives related to
549 competitive entry into the local exchange and exchange access markets."²³ ISP-bound
550 calls that are placed as toll calls have always been compensated in the same manner as
551 every other toll call. And 800 calls to ISPs have likewise always been treated as every
552 other 800 call. These calls were never part of the "existing intercarrier compensation
553 mechanism" that resulted in the regulatory arbitrage that is the subject of the FCC's
554 concerns, since access charges apply rather than local reciprocal compensation. There is
555 no arbitrage when a toll call is dialed as a toll call. The arbitrage only occurs when a toll
556 call is placed as a local call, eliminating the originating LEC's opportunity to recover its

(... cont'd)

local 1+10-digit basis would be compensated as all other local ISP calls. AT&T's witnesses' focus on 1+10-digit dialing misses the point.

²³ *ISP Remand Order* at ¶ 2.

costs via access charges. It is this situation that the FCC intends to remedy in its *ISP Remand Order*. Non-local ISP-bound calls are outside the scope of the FCC's *ISP Remand Order*. Accordingly, it is important to maintain this distinction in the parties' interconnection agreement.

Q. DO YOU AGREE WITH AT&T's ASSERTION THAT THE COMMISSION HAS NO JURISDICTION OVER ISP-BOUND TRAFFIC?

A. In a literal sense, yes, but the practical application of the *ISP Remand Order* confers some control on the Commission as it relates to SBC Illinois. In the *ISP Remand Order*, the FCC concluded that ISP-bound traffic is information access traffic and thus is governed by Section 251(g) of the Act rather than Section 251(b)(5). Consistent with other Section 251(g) traffic, the FCC retained jurisdiction and set forth a compensation scheme for ISP-bound traffic. But as I indicated above, when an ILEC such as SBC Illinois has not invoked the ISP Compensation Plan, local ISP-bound traffic is compensated in the same manner as 251(b)(5) traffic – traffic over which the Commission *does* have jurisdiction. So in establishing the parameters for 251(b)(5) traffic, including the appropriate compensation mechanism and rates, the Commission exercises incidental control over the compensation mechanism and rates for ISP-bound traffic. Once an ILEC has exercised its right to invoke the ISP Compensation Plan, the Commission still retains jurisdiction of ISP-bound traffic that is not local.

ISSUE 2D: If The ICC Adopts SBC's Proposal For FX-like Traffic Under Issue 2, Are Specific Recording Processes Warranted For FX Traffic?

(Intercarrier Compensation Section 21.7, including subsections)

Q. WHY IS SBC ILLINOIS PROPOSING LANGUAGE REGARDING SEGREGATING AND TRACKING FX TRAFFIC?

A. In Section 21.7 and its subsections, SBC Illinois proposes specific language to address the handling of FX traffic for billing purposes. AT&T objects to SBC Illinois' language and offers no competing language of its own. The bill and keep mechanism previously adopted by the Commission for FX traffic requires a carrier to identify and segregate FX traffic in order to suppress reciprocal compensation billing for that usage. Since it is incumbent upon the terminating carrier to render accurate reciprocal compensation billing, it must be able to identify what usage to suppress. SBC Illinois proposes that each Party be obligated to maintain a list of its 10-digit telephone numbers that are used to provide FX services. That list would serve as the basis upon which the terminating carrier would exclude the termination of FX traffic from its reciprocal compensation charges to the originating carrier. An NXX level summary of usage to these FX numbers would be supplied to the originating carrier monthly, thus permitting the originating carrier to validate its bills. This method of segregation is appropriate and reasonable.

Q. HAVE OTHER JURISDICTIONS ADDRESSED THE ISSUE OF HOW TO IDENTIFY FX TRAFFIC?

A. Yes. The Texas Public Utility Commission ("TX PUC") considered essentially the same issue under DPL Issue No. 3 in Docket No. 24015 in response to a consolidated complaint brought by several CLECs and joined by AT&T. Issue No. 3 raised the questions, "Is it appropriate to segregate and track FX-type traffic? If so, using what method?"

Q. WHAT WAS AT&T's POSITION IN THE TEXAS CASE REGARDING ITS COSTS TO TRACK FX TRAFFIC?

A. AT&T argued in Texas that it was cost-prohibitive to require separate tracking of FX traffic. "Although it has not engaged in a detailed financial analysis for implementing a tracking system, AT&T testified that a ballpark estimate of the cost of this work would be in the nature of approximately \$3 to \$4 million dollars [sic] (one-time cost for development for systems)."²⁴ In arguing against separate tracking of FX traffic, AT&T asserted that "the difficult and costly process of developing any *reasonably accurate* method of segregating and separately tracking FX-type traffic argues against discriminating against FX-type traffic for purposes of reciprocal compensation."²⁵ Emphasis added. AT&T's implication that FX traffic cannot be tracked accurately is clear.

Q. WHAT IS AT&T's POSITION ON THE SAME ISSUE IN THIS ILLINOIS ARBITRATION?

A. AT&T makes basically the same arguments in this arbitration that it made in Texas regarding the costs to track FX traffic. Under Q147 AT&T's witnesses present the same 3 to 4 million dollars as their estimate of development costs.

Q. HOW DID THE TX PUC RULE ON THIS ISSUE?

A. In considering the identification of FX traffic for bill and keep treatment, the TX PUC found as follows:

²⁴ Revised Arbitration Award, TX PUC Docket No. 24015 (Aug. 28, 2002), at 59

²⁵ *Id.* at 60

While parties need to address the appropriate method for segregation of traffic among themselves, the Arbitrators find that companies will need to agree upon a method to identify all FX numbers and suppress the billing for those minutes that originate outside of the local calling area. As terminating records already contain the necessary information for ten-digit screening, the Arbitrators find that inclusion of ten-digit screening in this segregation method would not be burdensome, but any mutually agreed-upon mechanism that would suppress the billing for those minutes would be acceptable.²⁶

Thus, carriers providing FX service in Texas are required to track FX usage based upon 10-digit screening – the same outcome SBC Illinois seeks.

Q. WHY IS 10-DIGIT SCREENING THE PREFERRED METHOD FOR CALCULATING FX TRAFFIC?

A. Ten-digit screening will provide the most accurate representation of a carrier's FX traffic and yield the most accurate and fair compensation between carriers. It should not be burdensome on either Party, especially given the TX PUC's order cited above. Retail FX service is a value-added service. Carriers typically do not provision a telephone number with a non-local NPA-NXX unless the customer specifically requests such an arrangement. To do otherwise would result in a chaotic assignment of telephone numbers that would ultimately result in the elimination of any meaningful rate boundaries for either retail or wholesale compensation mechanisms. It is difficult to imagine that AT&T doesn't somehow keep track of telephone number assignments that do not align with the requesting customer's physical rate center. Because both SBC Illinois and AT&T provision FX telephone numbers, both Parties should have accurate records of these assignments. Therefore, AT&T's sampling method is unnecessary. Furthermore, a

²⁶ *Id.* at 66

sample is just that – not 100% accurate and not based upon 100% fact. With the availability of recording all FX telephone numbers at the 10-digit level, SBC Illinois proposes that the contract have the ability to formalize the exclusion of FX traffic from billing at the 10-digit level.

Q. DOES SBC ILLINOIS' LANGUAGE PERMIT FLEXIBILITY IN THE PARTIES' ARRANGEMENT FOR FX TRACKING?

A. Yes. As an alternative to the specific 10-digit telephone number tracking that SBC Illinois recommends, SBC Illinois' language in Section 21.7.3 and 21.7.3.1 provides a factor mechanism that may be mutually agreed upon by the Parties. This mechanism would permit the Parties to assign a Percentage of FX Usage ("PFX") to represent the estimated percentage of FX traffic in a given month. This factor may be calculated using traffic studies or other agreeable method and may be adjusted on a quarterly basis.

Q. AT&T's WITNESSES PROPOSE A "PVFX FACTOR DEVELOPMENT METHODOLOGY" IN THEIR EXHIBIT 2.6. IS THIS METHODOLOGY ACCEPTABLE TO SBC ILLINOIS?

A. No. AT&T proposes a sampling methodology in Exhibit 2.6 that is intended to calculate the scope of FX traffic on its network through a Percent Voice FX ("PVFX"). SBC Illinois opposes this methodology because it is overly complex and will yield an inaccurate result. AT&T's proposed methodology fails to recognize that some ISP traffic may also be exchanged on an FX basis. As I stated above, the Commission has previously determined that FX traffic is not subject to reciprocal compensation under Section 251(b)(5) and that bill and keep is the appropriate compensation mechanism. The Commission did not exclude ISP FX traffic from this determination. Accordingly, any mechanism to develop a PFX factor must also include ISP FX calls.

671 **Q. WHAT WILL BE THE EFFECT ON INTERCARRIER COMPENSATION OF**
672 **SBC ILLINOIS' DECISION TO INVOKE THE ISP COMPENSATION PLAN?**

673 A. When SBC Illinois invokes the ISP Compensation Plan, AT&T may decide whether to
674 exchange 251(b)(5) traffic at the FCC's capped rate, or maintain the conventional
675 reciprocal compensation mechanism. Each of these scenarios requires separate
676 identification of some traffic.

677 **Q. WHAT WILL BE THE COMPENSATION MECHANISM IF AT&T DECIDES**
678 **TO EXCHANGE 251(b)(5) TRAFFIC AT THE FCC'S CAPPED RATE?**

679 In this instance, local ISP-bound traffic will be exchanged at the FCC's capped rate. In
680 addition, 251(b)(5) traffic will also be exchanged at that rate, so there is no need to
681 identify local ISP traffic separately from 251(b)(5) traffic. However, the issue of
682 compensation for FX traffic remains. In order to compensate FX traffic as bill and keep,
683 as the Commission requires, the Parties must identify such traffic. SBC Illinois has
684 proposed two mechanisms to accomplish this identification, either through actual ten-
685 digit identification or via PFX factors.

686 **Q. WHAT WILL BE THE COMPENSATION MECHANISM IF AT&T DECIDES**
687 **NOT TO EXCHANGE 251(b)(5) TRAFFIC AT THE FCC'S CAPPED RATE?**

688 A. In that scenario, the Parties would be left with three categories of traffic – local
689 ISP-bound, 251(b)(5), and FX – each subject to a different compensation regime. Local
690 ISP-bound traffic would be exchanged at the FCC's capped rate; 251(b)(5) traffic would
691 be exchanged at reciprocal compensation rates; and FX traffic would be exchanged as bill
692 and keep.

693 As AT&T's witnesses correctly point out under Q144, the FCC established a
694 rebuttable presumption that traffic that is out of balance by a ratio of 3:1 or more may be

presumed to be ISP-bound traffic.²⁷ However, the FCC does not explain how this presumption would be applied to calculate intercarrier compensation. In considering the effect of SBC Illinois' decision to invoke the ISP Compensation Plan, AT&T's witnesses offer no proposal either. SBC Illinois is willing to work cooperatively with AT&T in establishing an adequate compensation methodology for local ISP-bound traffic that is consistent with the FCC's rebuttable presumption.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE 2D?

A. SBC Illinois' proposed language in Section 21.7 for segregating and tracking FX traffic is fair and presents a reasonable mechanism for accommodating the Commission's longstanding bill and keep regime for FX traffic, and should be adopted. AT&T offers no competing language. Furthermore, AT&T's sampling methodology as set forth in its testimony is an inadequate and inaccurate means of calculating FX traffic and should be rejected.

ISSUE 2E: If The ICC Adopts SBC's Proposal For FX-like Traffic Under Issue 2, Should There Be Specific Audit Provisions In Article Intercarrier Compensation For The Tracking And Exclusion Of Foreign Exchange Traffic?

(Intercarrier Compensation Section 21.7.2 and its subsections)

Q. PLEASE DESCRIBE THIS ISSUE.

A. In Section 21.7.2 and its subsections, SBC Illinois has proposed specific audit provisions applicable to compensation for FX traffic, consistent with SBC Illinois' proposal for administration of FX compensation. AT&T opposes this language.

²⁷ *ISP Remand Order* at ¶ 79.

Q. WHY IS IT APPROPRIATE TO INCLUDE AUDIT LANGUAGE SPECIFIC TO FX TRAFFIC WITHIN THIS ARTICLE?

A. This language recognizes the unique nature of the data to be audited, separate from the PLU audit provisions contained within Article 1, General Terms and Conditions, Section 1.32.8. Most importantly, SBC Illinois' language includes a provision for retroactive billing adjustment that is absent from Section 1.32.8. This provision could be invoked in the event an audit reflects improper treatment of FX traffic as it relates to intercarrier compensation.

Q. WHY IS IT IMPORTANT TO PERMIT A RETROACTIVE BILLING ADJUSTMENT FOR FX TRAFFIC BUT NOT FOR PLU AUDITS?

A. First, the disparity between local reciprocal compensation rates and terminating access rates (which is the disparity for which a PLU audit corrects) pales compared to the disparity between bill and keep (a zero rate) and local reciprocal compensation rates (which is the disparity for which an FX audit corrects). Thus, a retroactive adjustment is more important after an FX audit than after a PLU audit because there are more dollars at stake.

Second, each carrier has some ability, based on its own usage records, to check the accuracy of the other carrier's application of PLU. In contrast, only one of the carriers holds the detailed data required to validate FX usage. And that carrier is the billing (terminating) carrier. In the event that FX traffic is either not adequately tracked or is misrepresented and therefore incorrectly billed as local, the originating carrier would have paid for reciprocal compensation on traffic that should not have been billed at all. Over a 24-month period (the period for which the parties have agreed bills can be corrected), that could represent significant overbilling. It is reasonable that the

741 originating carrier be reimbursed for moneys expended due to the terminating carrier's
742 FX billing error. In addition, contract language providing for a retroactive billing
743 adjustment would provide both carriers with the proper incentive to accurately track and
744 suppress billing of their FX end users' usage.

745 **Q. AT&T's WITNESSES SUGGEST IN Q155 THAT IF SBC ILLINOIS INVOKES**
746 **THE ISP COMPENSATION PLAN, THERE IS NO NEED FOR AUDITS. DO**
747 **YOU AGREE?**

748 A. No. The FCC established a *rebuttable* presumption that traffic out of balance in excess of
749 a 3:1 ratio can be assumed to be ISP-bound traffic.²⁸ That means that carriers must be
750 afforded the opportunity to rebut the presumption. The only way for a Party to
751 accomplish this would be through a detailed audit of the other carrier's records. SBC
752 Illinois' language in Section 21.7.2 provides the appropriate protections for both Parties
753 and is consistent with the *ISP Remand Order*.

754 **Q. BRIEFLY SUMMARIZE SBC ILLINOIS' POSITION ON THE VARIOUS**
755 **SUB-ISSUES OF ISSUE 2.**

756 A. The Commission has previously determined that uniform local calling areas should
757 prevail for purposes of intercarrier compensation. The Commission has also concluded
758 that FX traffic is not subject to reciprocal compensation and established a bill and keep
759 mechanism for compensation. SBC Illinois has proposed language in support of this
760 compensation mechanism to include tracking and appropriate audit provisions. SBC
761 Illinois requests the Commission affirm its prior determinations regarding local calling
762 areas and FX traffic and adopt the relevant language proposed by SBC Illinois. SBC

²⁸ *ISP Remand Order* at ¶ 79.

Illinois' proposed language in Sections 21.2.1, 21.2.7, 21.2.8, and 21.7 is consistent with prior Commission orders and the FCC's rules and should be adopted.

ISSUE 4: Should Information Access Traffic And Exchange Services For Such Access Be Defined As Traffic Exempted From Reciprocal Compensation?

(Intercarrier Compensation Section 21.2.4)

Q. WHAT IS THE DISPUTE REGARDING TRAFFIC EXEMPTED FROM RECIPROCAL COMPENSATION?

A. Both Parties agree that exchange access traffic and exchange services for such access are exempt from reciprocal compensation under Section 251(b)(5) the Act and that exchange access traffic is governed by the applicable access tariffs. That is where the agreement ends. It is SBC Illinois' position that information access traffic is also exempt from reciprocal compensation in accordance with FCC Rule 701(b)(1) (47 C.F.R. § 51.701(b)(1), which specifically states that information access traffic is not subject to Section 251(b)(5) reciprocal compensation. In contrast, AT&T's language narrows the exemption to include only "certain types" of information access traffic. AT&T clearly articulates that ISP-bound traffic is not exempt from Section 251(b)(5)'s reciprocal compensation obligations. In addition, SBC Illinois' language clarifies that traffic between ported telephone numbers on the same carrier's network (including UNE-P) is also not subject to reciprocal compensation.

Q. PLEASE COMMENT ON AT&T's WITNESSES' (FINNEY-SHELL-TALBOTT) ASSERTION AT Q161 THAT SBC ILLINOIS IS OBJECTING TO AT&T's LANGUAGE AS ANOTHER ATTEMPT TO EXCLUDE ISP-BOUND TRAFFIC FROM RECIPROCAL COMPENSATION.

A. AT&T's witnesses' implication that SBC Illinois is focused on ISP-bound traffic is unfounded. While compensation for ISP-bound traffic has been at issue in this

arbitration, it is by no means SBC Illinois' sole focus. FCC Rule 701(b)(1) exempts information access from Section 251(b)(5) obligations, and information access includes services beyond ISP services, e.g., bank transaction downloads. AT&T inappropriately attempts to place limits on the information access exemption.

Q. WHAT IS SBC ILLINOIS' POSITION REGARDING ISP-BOUND TRAFFIC AND RECIPROCAL COMPENSATION.

A. SBC Illinois has discussed with AT&T its intention to invoke the ISP Compensation Plan under its existing interconnection agreement. The terms of that plan will govern the Parties' agreement relative to ISP-bound traffic.

Q. WHY DID SBC ILLINOIS INCLUDE INFORMATION ACCESS TRAFFIC ALONG WITH EXCHANGE ACCESS TRAFFIC AS BEING EXEMPT FROM RECIPROCAL COMPENSATION?

A. In its *ISP Remand Order*, the FCC specifically exempted "information access" from reciprocal compensation.²⁹ And the FCC codified this exemption in the modified reciprocal compensation rules (specifically, Rule 701(b)(1)) it promulgated in that Order. SBC Illinois is merely capturing that exemption within this agreement.

Q. HOW DOES THIS APPLY TO INTERNET SERVICE PROVIDER ("ISP") TRAFFIC?

A. In its *ISP Remand Order*, the FCC concluded that "ISP-bound traffic falls under the rubric of "information access," a legacy term carried over from the MFJ."³⁰ The FCC

²⁹ *Id.* at ¶¶ 1 and 34.

³⁰ *Id.* at ¶ 39.

therefore determined ISP-bound traffic is governed by Section 251(g) rather than Section 251(b)(5) of the Act.³¹

Q. WHAT IS YOUR UNDERSTANDING OF THE LEGAL STATUS OF THE *ISP REMAND ORDER*?

A. The *ISP Remand Order* was appealed to federal court. SBC Illinois' counsel has advised me that while the D.C. Circuit Court of Appeals concluded that the FCC's reasoning was flawed, the Court did not vacate or even stay the *ISP Remand Order*.³² It merely remanded it to the FCC for further action. Accordingly, the *ISP Remand Order* and its rules remain in full force and effect.

Thus, it is clear that information access traffic is exempt from the transport and termination obligations of Section 251(b)(5).

Q. BRIEFLY DESCRIBE THE EFFECT OF THE *ISP REMAND ORDER* ON RECIPROCAL COMPENSATION FOR ISP-BOUND TRAFFIC.

A. In an attempt to cure the market distortions that were resulting from carriers having applied Section 251(b)(5) to ISP-bound traffic, the FCC established a transitional compensation plan for such traffic (ISP Compensation Plan).³³ Without going into all the details of the ISP Compensation Plan, suffice it to say that each ILEC was given an option on a state by state basis regarding compensation for ISP-bound traffic.³⁴ An ILEC electing the ISP Compensation Plan would be subject to diminishing intercarrier

³¹ *Id.* at ¶ 42.

³² *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

³³ *Id.* at ¶ 8.

³⁴ *Id.* at n. 179.

compensation rate caps for its ISP-bound traffic. However, the ILEC would only enjoy these rate caps in the event it offered to exchange its Section 251(b)(5) traffic under the same caps. Any ILEC that did not elect the ISP Compensation Plan would be obligated to compensate ISP-bound traffic at its approved reciprocal compensation rate(s).

Q. HOW DOES THIS RELATE TO SBC ILLINOIS' RECIPROCAL COMPENSATION AGREEMENT WITH AT&T?

A. The FCC has exempted information access traffic from reciprocal compensation, so language in this agreement articulating that exemption is 100% accurate and appropriate. This in no way relieves SBC Illinois of its obligations regarding compensation for local ISP-bound traffic as set forth in the *ISP Remand Order*. In accordance with its decision to invoke the ISP Compensation Plan, SBC Illinois will exchange local ISP-bound traffic with AT&T in accordance with that plan.

Regardless of how ISP-bound traffic is categorized, the Parties agree that the FCC has taken jurisdiction of this traffic and established the relevant parameters for intercarrier compensation.³⁵ Either the ILEC has accepted the ISP Compensation Plan and compensates local ISP-bound traffic consistent with the defined caps, or it has not and compensates local ISP-bound traffic at approved reciprocal compensation rates for Section 251(b)(5) traffic. The Commission has no jurisdiction over traffic subject to the ISP Compensation Plan and this agreement cannot change either Party's compensation obligations in that regard.

³⁵ AT&T testimony (Finney-Schell-Talbott) at Q97.

847 **Q. GIVEN THAT LOCAL ISP-BOUND TRAFFIC HAS ALREADY BEEN**
848 **ADDRESSED, HOW DO YOU EXPLAIN AT&T's OBJECTION TO SBC**
849 **ILLINOIS' LANGUAGE?**

850 A. I expect that since SBC Illinois will be invoking the ISP Compensation Plan, AT&T's
851 objection to SBC Illinois' language will be abated. To the extent this issue remains of
852 concern to AT&T as addressed in its testimony for Issue 5, I will respond accordingly in
853 my rebuttal testimony.

854 **Q. PLEASE EXPLAIN SBC ILLINOIS' LANGUAGE EXEMPTING CERTAIN**
855 **TRAFFIC ASSOCIATED WITH PORTED NUMBERS FROM RECIPROCAL**
856 **COMPENSATION.**

857 A. Section 215(b)(5) provides for reciprocal compensation when calls are exchanged
858 between carriers' networks. When an end user's telephone number is ported from one
859 carrier's network to another, it might appear to still reside with the first carrier because
860 the NPA-NXX associated with that end user is assigned to the first carrier. SBC Illinois
861 requests language in this agreement that clearly delineates the exclusion of traffic from
862 reciprocal compensation for ported telephone numbers that no longer reside with SBC
863 Illinois.

864 **Q. PLEASE PROVIDE A SPECIFIC EXAMPLE.**

865 A. Suppose Mr. Smith is currently served by SBC Illinois and Mr. Jones is served by AT&T
866 via UNE-P. Reciprocal compensation applies for traffic exchanged between Mr. Smith
867 and Mr. Jones since they are served by different facilities-based carriers, SBC Illinois and
868 AT&T. Let's now suppose that Mr. Smith's service is migrated from SBC Illinois to
869 AT&T's switch and Mr. Smith elects to retain his telephone number. The NPA-NXX is
870 assigned to SBC Illinois in the Local Exchange Routing Guide ("LERG"), but the end
871 user is not an SBC Illinois customer.

872 **Q IN THIS EXAMPLE, WHAT CARRIERS PARTICIPATE IN RECIPROCAL**
873 **COMPENSATION?**

874 A. Because Mr. Smith and Mr. Jones are now both served by AT&T, there is no reciprocal
875 compensation associated with calls between Mr. Smith and Mr. Jones. This is true even
876 though it appears from his telephone number that Mr. Smith is served by SBC Illinois.
877 Because it might appear that SBC has reciprocal compensation obligations *vis-à-vis*
878 Mr. Smith, it is important that this agreement clearly articulate that this traffic is excluded
879 from reciprocal compensation.

880 **Q. WHAT IS YOUR CONCLUSION REGARDING THIS ISSUE?**

881 A. The FCC has clearly exempted information access traffic from reciprocal compensation
882 in the same manner that it has exempted exchange access traffic. Thus, the inclusion of
883 information access traffic, without qualification, as exempt from reciprocal compensation
884 is appropriate for this agreement. SBC Illinois' provisions regarding ported telephone
885 numbers and other traffic found to be exempt from reciprocal compensation are also
886 appropriate. SBC Illinois' language in Section 21.2.4 should be adopted.

887 **ISSUE 7: If The Originating Party Passes CPN On Less Than 90% Of Its Calls, Should**
888 **Those Calls Passed Without CPN Be Billed As IntraLATA Switched Access**
889 **Or Based On A Percentage Local Usage (PLU)?**

890 **(Intercarrier Compensation Section 21.3.4)**

891 **Q. PLEASE DESCRIBE THIS ISSUE.**

892 A. Most calls that the Parties deliver to each other under this interconnection agreement will
893 include information – Calling Party Number (“CPN”) information – that will allow the
894 receiving carrier to determine whether the call is local (and subject to reciprocal
895 compensation) or not (and therefore subject to appropriate access charges). The Parties

896 recognize, however, that they will probably deliver some traffic to each other that does
897 not contain CPN. Intercarrier Compensation section 21.3.4 addresses how the Parties
898 will compensate each other for such traffic. The Parties agree on how such traffic will be
899 treated so long as it less than 10% of the traffic that one carrier delivers to the other – it
900 will be billed on a Percent Local Usage (“PLU”) basis, as I describe below. The
901 disagreement concerns *excessive* traffic that either carrier delivers to the other without
902 CPN, *i.e.*, traffic constituting 10% or more of the traffic delivered by that carrier.

903 Recognizing that virtually all traffic is capable of carrying CPN, SBC Illinois’
904 language in Section 21.3.4 allows a Party one month to correct an excessive CPN
905 condition, after which time that Party is charged terminating access rates for the traffic it
906 delivers without CPN. In contrast, AT&T proposes language that would continue the
907 PLU treatment for the excessive traffic without CPN during an open-ended exchange of
908 data and correction period, with no incentive for the Party passing excessive traffic
909 without CPN to gain resolution.

910 **Q. PLEASE DESCRIBE IN MORE DETAIL THE AREAS OF AGREEMENT**
911 **REGARDING CPN.**

912 A. AT&T and SBC Illinois agree that there will likely be some small amount of traffic that
913 is passed between their networks without CPN. CPN is a standard part of an SS7
914 signaling message, and the vast majority of intercarrier traffic contains CPN information.
915 However there are a few circumstances where a call may not contain CPN, such as when
916 the call is originated off the SS7 network (via a rural multi-frequency network, for
917 example). When CPN is lacking, the carrier to which the traffic is delivered cannot

determine (at least in the normal course) where the traffic originated and, therefore, whether or not the call is local.

The Parties also agree that when 90% or more of the traffic either carrier delivers to the other contains CPN, the traffic without CPN – which has to be billed as local or intraLATA toll but cannot be identified as either one without the CPN – will be billed as local or intraLATA toll in direct proportion to the PLU calculated in accordance with Section 21.15.1.

Q. WHAT IS PLU AND WHY WOULD IT BE USED?

A. When local and toll traffic are combined on the same trunk group and are to be compensated at different rates, a PLU factor is sometimes used to bill for traffic on the trunk group that cannot be identified as local or toll. The PLU factor is calculated by examining traffic that can be identified as local or intraLATA toll and dividing the local minutes delivered for termination by the total minutes terminated. The result is a ratio that is then applied to the traffic that cannot be identified as local or intraLATA toll. (For example: If almost all of the traffic on a trunk group can be identified as local or intraLATA toll based on CPN and a study shows that 74% of the identifiable traffic is local, 74% is the PLU, and the unidentifiable traffic is treated as 74% local and 26% intraLATA toll.)

Q. IF A PLU RATIO WORKS FOR SOME UNIDENTIFIED TRAFFIC, WHY DOES SBC ILLINOIS NOT WANT TO USE IT FOR ALL UNIDENTIFIED TRAFFIC?

A. If all unidentified traffic were billed using PLU, some carriers would have an incentive to not pass CPN information on calls that originate on their networks, even though the information is available. By “stripping” the CPN from their intraLATA toll calls, such

carriers would be billed for those calls based on the proxy PLU. They would thus arbitrage the compensation regime by paying reciprocal compensation on their intraLATA toll calls instead of the higher access rates that should apply. To reduce the opportunity for arbitrage, PLU should be used only for the relatively modest volume of traffic (less than 10%) for which it is reasonable to anticipate that CPN is actually unavailable.

Q. WHAT IS THE BASIS FOR THE TEN PERCENT THRESHOLD PROPOSED BY SBC ILLINOIS?

A. As long as no one is trying to game the system by intentionally stripping CPN from intraLATA toll calls that originate on its network, the percentage of traffic that does not contain CPN will rarely if ever be as high as 10%. Thus, SBC Illinois' proposed 10% threshold will serve its intended purpose – to discourage arbitrage – while having little if any effect in the normal course of business.

Due to the make up of today's telephone network signaling systems (SS7), the volume of unidentified traffic should be small. The vast majority of all carriers' traffic is technically capable of passing CPN information. The minimal unidentified amount reflects occasional software errors where CPN is not generated at call origination. Even with such errors, for a carrier to exceed 10% unidentified traffic is a rarity, unless it is being done deliberately. SBC Illinois proposes a relatively high 10% threshold for unidentified traffic in order to allow a carrier that may experience an error in its network that results in traffic being passed without CPN the opportunity to fix the error prior to being charged at access rates. In essence, due to the technical capabilities of both Parties' networks, it would be very unusual to see unidentified traffic exceed 10% at any given

time. Therefore, 10% offers a "window" through which to correct any problems before access charges apply.

Q. HOW MUCH TRAFFIC IS AT&T CURRENTLY SENDING TO SBC ILLINOIS WITHOUT CPN?

A. Without revealing specific data that may be proprietary, a recent traffic study indicates that AT&T is delivering less than 5% of its calls to SBC Illinois without CPN. There is no reason to believe that percentage should increase, and so long as it remains under 10%, SBC Illinois' proposed language will yield exactly the same result as AT&T's.

Q. WHAT IS SBC ILLINOIS' CONCERN RELATIVE TO UTILIZING PLU FOR EXCESSIVE UNIDENTIFIED TRAFFIC?

A. AT&T proposes that excessive unidentified traffic be compensated based on the PLU factor no matter how much unidentified traffic there is. AT&T further proposes that the Parties exchange data on an open-ended basis "to determine the cause of the failure and to assist its correction." While this may sound reasonable, it fails to address two important concerns: 1) traffic deliberately passed without CPN; and 2) traffic passed without CPN by a CLEC lacking motivation to rectify the problem.

AT&T's language continues the data analysis period indefinitely, during which time the PLU factor established for traffic with CPN will apply to excessive unidentified traffic. Faced with an uncooperative CLEC, SBC Illinois' only possible recourse would be dispute resolution. Yet AT&T's language has no provision for dispute resolution, and there is no indication as to at what point of frustration it could be invoked. The Parties would simply continue utilizing the established PLU factor indefinitely.

986 **Q. ARE YOU SUGGESTING THAT AT&T WOULD STRIP CPN FROM ITS**
987 **TRAFFIC AS YOU HAVE SAID SOME CLECS MIGHT?**

988 A. I would not expect AT&T to misrepresent its traffic in this way and do not believe they
989 are doing so, but I have no way of knowing how other carriers that will adopt this
990 agreement under Section 252(i) of the Act will conduct themselves. As the Commission
991 is aware, it is common for CLECs in Illinois to select AT&T's agreements to adopt as
992 their own. Because of Section 252(i)'s requirement for nondiscriminatory treatment of
993 requesting carriers, SBC Illinois must ensure that proper protections exist in its contracts
994 to guard against potential abuse by unknown carriers.

995 **Q. AT&T's WITNESSES (FINNEY-SCHELL-TALBOTT) STATE AT Q186 THAT**
996 **THE FCC HAS ADDRESSED THIS ISSUE. HOW DO YOU RESPOND?**

997 A. I am not aware of the FCC itself addressing this issue. The *Verizon Order* AT&T's
998 witnesses reference was not a decision of the FCC. Rather, it was rendered by the FCC's
999 Wireline Competition Bureau ("WCB") acting in the stead of the Virginia State
1000 commission. Furthermore, the WCB's decision on this issue did not involve an
1001 interpretation of an FCC Rule and did not purport to be establishing a national rule.
1002 Accordingly, the WCB decision should be given no more weight than any State
1003 commission arbitration decision. Other State commissions have resolved this issue as
1004 SBC Illinois proposes that it be resolved here,³⁶ and those decisions merit at least as
1005 much weight as the WCB's.

³⁶ AT&T Petition for Arbitration to Establish an Interconnection Agreement with Verizon, Order Resolving Arbitration Issues (issued July 30, 2001) (New York Commission AT&T Arbitration Order); and Sprint Order, D.T.E. 00-54 (2000) (Massachusetts DTE Sprint Arbitration Order).

1006 **Q. AT&T's WITNESSES STATE AT Q184 THAT AT&T HAS A**
1007 **DISPROPORTIONATE SHARE OF BUSINESS CUSTOMERS. PLEASE**
1008 **COMMENT.**

1009 A. AT&T's stated concern is that, as a new entrant, AT&T serves a disproportionate share of
1010 business customers, and that some of these would be multi-line businesses using
1011 antiquated Customer Premises Equipment ("CPE"), limiting AT&T's ability to pass CPN
1012 on calls originated by those customers. Without revealing specific data that is likely
1013 proprietary, my investigation indicates that this is not the case. Importantly, AT&T
1014 offers no evidence that it even serves such customers as support for its statements. It
1015 merely raises the possibility. Given AT&T's focus on SBC Illinois' UNE-P product
1016 offering, which would not be connected to antiquated CPE, I question the validity of
1017 AT&T's concern. In addition, as I indicated above, AT&T is currently passing in excess
1018 of 95% of its traffic with CPN. AT&T's suggestion that it might be limited in its ability
1019 to pass CPN is without merit.

1020 **Q. WHAT IS YOUR CONCLUSION ON THIS ISSUE?**

1021 A. SBC Illinois' proposal in Section 21.3.4 for a one-month period to correct a problem of
1022 excessive traffic passed without CPN before applying intraLATA toll charges to such
1023 unidentified traffic in the third month is reasonable and should be approved.

1024 **ISSUE 9: Shall SBC Illinois Be Required To Make Available To AT&T Comparable**
1025 **Compensation Arrangements As Those Between SBC And Other Incumbent**
1026 **Local Exchange Carriers ("ILECs") and Competitive Local Exchange**
1027 **Carriers ("CLECs")?**

1028 **(Intercarrier Compensation Section 21.3.7)**

1029 **Q. PLEASE DESCRIBE THIS ISSUE.**

1030 A. AT&T has proposed the following language for inclusion in Section 21.3.7:

SBC will make available to AT&T a compensation arrangement for serving customers in any optional or mandatory, one way or two way EAS, including ELCS, area serviced by an ILEC or CLEC other than AT&T, that is similar to the corresponding arrangement that SBC-Illinois has with that other ILEC or CLEC for serving those customers when AT&T is similarly situated to the other ILEC or CLEC.

SBC Illinois objects to this language, because it would improperly permit AT&T to avail itself of another carrier's interconnection agreement terms and conditions on an end user specific basis, subsequent to the execution of this agreement.

Q. WHY IS THIS LANGUAGE INAPPROPRIATE FOR THIS AGREEMENT?

A. AT&T and SBC Illinois have been negotiating an interconnection agreement under the terms of the Act since November 2002 and have commenced arbitration of the unresolved issues. The result of this arbitration will be an executed interconnection agreement that reflects all issues raised between the Parties, whether negotiated or arbitrated, including terms and conditions for intercarrier compensation. AT&T proposes that it be permitted to take this agreement and toss it to the winds in the event that it obtains an end user from another carrier that has negotiated reciprocal compensation terms and conditions more to AT&T's liking. Moreover, AT&T's language suggests that it be permitted to do so on an end user specific basis. This is inconsistent with all established reciprocal compensation precedent.

Q. ISN'T THIS A SIMPLE MFN ISSUE UNDER SECTION 252(i) OF THE ACT?

A. Looked at from the point of view of Section 252(i), AT&T's proposal would clearly have to be rejected. Section 252(i) permits a requesting carrier to adopt from an approved interconnection agreement any interconnection, service or UNE on the same terms and conditions as those in the underlying agreement. As the FCC has declared, a carrier

exercising its rights under Section 252(i) must take all “legitimately related” terms in the underlying agreement (*First Report and Order*, ¶ 1315). AT&T, however is not requesting to opt into any interconnection, service or UNE in another carrier’s agreement, including all legitimately related terms and conditions. Rather, AT&T seeks to have two (or more) sets of reciprocal compensation arrangements with SBC Illinois – the one the parties negotiated (and to some extent are now arbitrating) and, *for certain end users only*, another one, lifted, but only in part, from another agreement..

Q. AT&T’s WITNESSES (FINNEY-SCHELL-TALBOTT) OFFER AN EXAMPLE OF HOW THEIR LANGUAGE WOULD APPLY. HOW DO YOU RESPOND?

A. Frankly, I am astonished by AT&T’s stated intentions regarding its language. AT&T’s witnesses offer an example at Q197 whereby when another carrier’s end user converts to AT&T for local service, AT&T should be afforded the same reciprocal compensation terms and conditions *vis-à-vis* that end user that the other carrier has in its contract. AT&T’s testimony suggests that Section 252(i) of the Act permits it to change its contracted terms midstream simply because it acquired a particular end user from another carrier. I am not aware of any carrier in any jurisdiction that has been permitted to “pick and choose” terms and conditions from another carrier’s contract once its interconnection agreement has been executed with the ILEC.

Q. WOULD SBC ILLINOIS BE WILLING TO NEGOTIATE AN AMENDMENT WITH A T&T CONCERNING RECIPROCAL C OMPENSATION TERMS AND CONDITIONS AT SOME TIME IN THE FUTURE?

A. This agreement contains Intervening Law provisions in the General Terms and Conditions (“GT&C”) that permit either Party to request re-negotiation of terms and conditions affected by a change in law. In the event that AT&T invokes Intervening Law

1081 relative to reciprocal compensation, then, of course, SBC Illinois will negotiate with
1082 AT&T to amend this agreement consistent with the relevant law. And while SBC Illinois
1083 has no other obligation to amend the agreement, it may elect to do so based on its own
1084 business needs.

1085 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

1086 A. AT&T's language in Section 21.3.7 requiring SBC Illinois to import reciprocal
1087 compensation terms and conditions from another carrier's agreement, subsequent to the
1088 execution of AT&T's agreement, is inappropriate and should be rejected in its entirety.

1089 **ISSUE 10A: Should 8YY Traffic Compensation Be Determined By The Jurisdiction Of**
1090 **The Traffic?**

1091 **(Intercarrier Compensation Sections 21.9.1 and 21.9.4)**

1092 **Q. PLEASE DESCRIBE THE ISSUE REGARDING 8YY COMPENSATION.**

1093 A. AT&T seeks to change industry standard intercarrier compensation arrangements for
1094 8YY³⁷ calls by redefining them as either local or toll calls based on geographic location.
1095 SBC Illinois' language maintains the status quo by compensating all 800 calls in
1096 accordance with industry standard practice.

1097 **Q. BRIEFLY DESCRIBE 800 SERVICE.**

1098 A. Toll-free 800 service is an interexchange service that is accessed by callers seeking to
1099 legitimately avoid toll charges, permitting inward calling to the 800 customer without
1100 charge to the caller. The 800 service subscriber (called party) pays its service provider

³⁷ 8YY refers to calls placed on a toll-free basis to 800 series NPAs, e.g., 800, 888, 877, 866. This is commonly referred to as 800 service.

for all incoming usage based on the tariffed or contracted service. This is referred to as a "called party pays service." Without getting into the technical aspects of 800 call processing, when a caller places a call to an 800 number, a database lookup is performed in order to route the call to the terminating carrier for completion. The database lookup returns either a plain old telephone service ("POTS") 10-digit telephone number, which is routed based on NPA-NXX, or it returns the 800 number with routing instructions. There is no charge to the caller for this call.

Q. WHAT IS THE INDUSTRY STANDARD FOR INTERCARRIER COMPENSATION RELATIVE TO 800 TRAFFIC?

A. Generally, the purpose of intercarrier compensation is for the carrier that receives the revenue from its customer for handling a call to share that revenue with another carrier that contributes to call processing. In the case of 800 service, since it is the terminating carrier that receives the revenue, it is the terminating carrier's responsibility to reimburse the originating carrier for its costs in handling a call. The industry standard for 800 service is that all calls are treated as interexchange traffic, regardless of the location of the calling and called parties. Accordingly, originating access charges apply.

Q. WHY IS IT APPROPRIATE FOR THIS COMMISSION TO MAINTAIN THE INDUSTRY STANDARD OF COMPENSATING FOR 800 TRAFFIC BASED ON ACCESS EVEN WHERE THE CALL WOULD HAVE BEEN LOCAL IF IT HAD BEEN DIALED AS LOCAL?

A. There are three reasons: Such a treatment is: 1) consistent with retail tariffs for called-party pays service; 2) consistent with established practice in Illinois; and 3) consistent with the Commission's decision in the Global arbitration.

1124 **Q. HOW IS THE INDUSTRY STANDARD CONSISTENT WITH RETAIL**
1125 **TARIFFS?**

1126 A. In the Commission-approved retail tariffs for 800 service,³⁸ 800 calls are billed based on
1127 volume of traffic received, regardless of whether the calls begin and end in the same
1128 geographical local calling area. Since terminating carriers bill their 800 customers'
1129 terminating usage based on volume rather than varying the rate by end user location,
1130 revenue should be shared between carriers on that basis.

1131 **Q. WHAT IS THE STANDARD PRACTICE IN ILLINOIS REGARDING**
1132 **INTERCARRIER COMPENSATION FOR 800 CALLS?**

1133 A. SBC Illinois' interconnection agreements provide for intercarrier compensation of 800
1134 calls based on the jurisdiction of such calls as toll, consistent with the classification of
1135 800 service as an interexchange service. Accordingly, originating access charges apply.
1136 This standard practice for Illinois is in line with industry standard practice, and should be
1137 retained.

1138 **Q. WHAT OTHER CONCERNS DO YOU HAVE REGARDING AT&T's**
1139 **PROPOSAL FOR 8YY COMPENSATION?**

1140 A. When an 800 service is established, the service provider assigns a 10-digit POTS
1141 telephone number for routing purposes. If AT&T were allowed to jurisdictionalize 800
1142 calls it receives as local or toll, AT&T could effectively tag them all as local. One way to
1143 do so would be to assign each customer a POTS number from every local calling area.
1144 As calls come in to an 800 number, they would be mapped as having come to whichever
1145 POTS number corresponds to the local area from which the call came, thus appearing to

³⁸ ICC Tariff No. 20 Part 10.

meet AT&T's definition of local 800 service.³⁹ With the 8YY provisions proposed by AT&T in Section 21.9.1, AT&T could sell a business customer a single 800 number from which he could receive LATA wide local calls. The terminating network (AT&T) would have only local reciprocal compensation costs rather than access. Since its intercarrier compensation costs would be lower than all other carriers in Illinois – which pay originating access when terminating 800 calls – AT&T could use this mechanism to put a price squeeze on other carriers and gain an unfair competitive advantage.

Q. HOW DID THE COMMISSION RULE ON A SIMILAR ISSUE RAISED BY GLOBAL NAPS?

A. While Global did not raise an issue specific to 800 traffic, it did propose that reciprocal compensation be based on each carrier's local calling areas. To allow AT&T to associate 800 service NXXs with different calling areas (depending on some attribute of AT&T's end user that SBC Illinois would be unable to determine, e.g., address, POTS telephone number) would be to allow what Global sought a year ago – a LATA-wide incoming number at local rates. As I stated in my testimony under Issue 2a, the Commission found in SBC Illinois' favor in that arbitration regarding application of local calling areas to intercarrier compensation. The Commission denied Global's request for a LATA-wide local calling area as it relates to intercarrier compensation.

The Commission rejects Global's request that it be allowed to define its own local calling area. At the present time, the Commission has approved one LCA in Illinois that is currently used by Ameritech. While there may be technological changes since the Commission last visited the LCA issue, it would be

³⁹ This can be compared to the fallacy AT&T proposes that FX calls ought to be compensated as local simply because they are locally dialed, when FX is actually more akin to an interexchange service. Like FX, 800 service is an interexchange service and should be treated as such for intercarrier compensation purposes.

1169 inappropriate to reconsider the issue in this docket. The
1170 Commission agrees with Ameritech and Staff that to recognize any
1171 other arrangement would be inappropriate in light of these factors,
1172 but would also cause confusion in the area of intercarrier
1173 compensation.⁴⁰

1174 Imposing different compensation mechanisms for 800 calls would cause the same
1175 confusion.

1176 **ISSUE 10B: Should the 8YY Service Provider Be Required To Suppress Billing Of**
1177 **Terminating Charges To The Originating Carrier And Provide A Report Of**
1178 **The Traffic Suppressed?**

1179 **(Intercarrier Compensation Section 21.9.3)**

1180 **Q. PLEASE DESCRIBE THIS ISSUE.**

1181 A. AT&T's language in Section 21.9.3 would require either suppression of terminating local
1182 or access billing for 800 calls or, in the alternative, a credit to the originating Party for
1183 such charges. SBC Illinois objects to this language as being unnecessary for this
1184 agreement.

1185 **Q. PLEASE DESCRIBE THE BILLING MECHANISM FOR INTERCARRIER**
1186 **COMPENSATION OF 800 TRAFFIC.**

1187 A. While I am not a billing expert, I do have a general understanding of the billing
1188 mechanism for intercarrier compensation with respect to 800 traffic. First of all, it is
1189 important to recognize that since 800 service is a called party pays service, it is the
1190 terminating carrier that is obligated to compensate the originating carrier for 800 service
1191 usage. The Parties have agreed to language under Section 21.9.4 that captures this
1192 obligation.

⁴⁰ Arbitration Decision, Case No. 01-0786 (May 14, 2002), at 12.